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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**HEREDITARY CHIEF WILBUR
SLOCKISH, a resident of Washing-
ton, and an enrolled member of the
Confederated Tribes and Bands of
the Yakama Nation,**

Case No. 3:08-cv-1169-ST

**PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDG-
MENT**

Request for Oral Argument

HEREDITARY CHIEF JOHNNY JACKSON, a resident of Washington, and an enrolled member of the Confederated Tribes and Bands of the Yakama Nation,

CAROL LOGAN, a resident of Oregon, and an enrolled member of the Confederated Tribes of Grande Ronde,

CASCADE GEOGRAPHIC SOCIETY, an Oregon nonprofit corporation,

and

MOUNT HOOD SACRED LANDS PRESERVATION ALLIANCE, an unincorporated nonprofit association,

Plaintiffs,

v.

UNITED STATES FEDERAL HIGHWAY ADMINISTRATION, an Agency of the Federal Government,

UNITED STATES BUREAU OF LAND MANAGEMENT, an Agency of the Federal Government,

and

ADVISORY COUNCIL ON HISTORIC PRESERVATION, an Agency of the Federal Government.

Defendants.

LOCAL RULE 7.1 CERTIFICATION

Under Local Rule (“LR”) 7-1(a), Plaintiffs Hereditary Chief Wilbur Slockish, Hereditary Chief Johnny Jackson, Carol Logan, Cascade Geographic Society, and Mount Hood Sacred Lands Preservation Alliance (“the Plaintiffs”), by and through their undersigned counsel, contacted Defendants United States Federal Highway Administration, United States Bureau of Land Management, and Advisory Council on Historic Preservation (“the Government”), by and through their counsel, Reuben Schiffman, and made a good faith effort to resolve the dispute over this motion, but have been unable to do so.

MOTION

On March 13, 2017, this Court entered a Scheduling Order setting a deadline of May 16, 2017, for the Government “to file [a] dispositive motion on *jurisdictional grounds*.” ECF 285 (emphasis added), 286. On May 16, 2017, the Government filed a motion for partial summary judgment based on one jurisdictional ground: standing. ECF 287 at 25-29. But it also sought partial summary judgment on two merits grounds (*id.* at 14-25, 29-31): (1) the doctrine of laches, which is a “non-jurisdictional timeliness defense[],” *Dixon v. McDonald*, 815 F.3d 799, 804 (Fed. Cir. 2016), and (2) the question of “substantial burden” under the Religious Freedom Restoration Act (RFRA), which is a question “on the merits.” *S. Fork Band Council Of W. Shoshone Of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 723 (9th Cir. 2009).

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56, Plaintiffs now respectfully move this Court for partial summary judgment on the “substantial burden” part of their claim under the Religious Freedom Restoration Act (RFRA). *See*

Fed. R. Civ. P. 56(a) (“A party may move for summary judgment ... [on] part of [a] claim”); ECF 223 at 35-37 (Fourth Amended Complaint). There is no material dispute of fact on this issue, and Plaintiffs have established as a matter of law that Defendants have “substantially burden[ed]” their religious exercise. 42 U.S.C. § 2000bb-1(a).

MEMORANDUM

In support of this Motion, Plaintiffs’ incorporate by reference their Response to Defendants’ Motion for Partial Summary Judgment and the exhibits thereto, ECF 292, which set forth in detail the facts and arguments supporting the “substantial burden” part of Plaintiffs’ RFRA claim.

CONCLUSION

Plaintiffs’ motion for partial summary judgment should be granted, and the Government’s motion for partial summary judgment should be denied.

Respectfully submitted.

/s/ Michael A. Patterson

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CERTIFICATE OF SERVICE

I certify that on August 7, 2017, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

August 7, 2017

/s/ Luke W. Goodrich
Luke W. Goodrich
Attorney for Plaintiffs